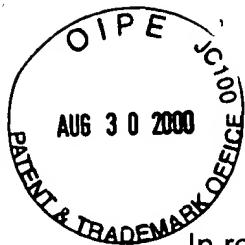


GAU 3764

PATENT

Attorney Docket No. 101.0044-04000

Customer No. 22882



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#3

In re Application of:

Gary K. Michelson, M.D.

Serial No.: 09/605,001

(Cont. of Appln. Serial No. 08/396,414,
filed 02/27/1995)

Filed: June 27, 2000

For: Apparatus and Method of Inserting
Spinal Implants

(Group Art Unit: 3764)

(Examiner: M. Brown)

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

CERTIFICATE OF MAILING VIA FIRST CLASS MAIL

Date of Deposit: August 29, 2000

I hereby certify that:

1. Information Disclosure Statement Under 37 C.F.R. § 1.97(b) with Form PTO-1449 and 134 documents
2. Self-addressed stamped return postcard receipt

are being deposited with the United States Postal Service to Addressee with sufficient postage as first class mail under 37 C.F.R. § 1.8 on the date indicated above and are addressed to:

Assistant Commissioner for Patents
Washington, D.C. 20231

Date: August 29, 2000

14500 Avion Parkway, Suite 300
Chantilly, VA 20151-1101
Telephone: (703) 679-9300
Facsimile: (703) 679-9303


Sandra L. Blackmon

TC 3700 MAIL ROOM

SEP - 1 2000

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PATENT
Attorney Docket No. 101.0044-04000
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)

Gary K. Michelson, M.D.)

Serial No.: 09/605,001)

(Cont. of Appln. Serial No. 08/396,414,)
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(Examiner: M. Brown)

For: Apparatus and Method of Inserting)
Spinal Implants)

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(b)

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(b), applicant brings to the attention of the Examiner the documents listed on the attached PTO 1449. This Information Disclosure Statement is being filed within three months of the filing date of the above-referenced application.

Copies of the following listed documents are enclosed:

U.S. PATENT DOCUMENTS		
Document Number	Date	Name
Des. 245,259	8/2/77	Shen
Des. 257,511	11/11/80	Zahn
Re. 31,865	4/16/85	Roux
350,420	10/5/1886	Dillon
1,137,585	4/27/15	Craig
2,065,659	12/29/36	Cullen

TC 3700 MAIL ROOM

SEP - 1 2000

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#3
11/15/00

2,181,746	11/28/39	Siebrandt
2,243,718	5/27/41	De G. Moreira
2,372,622	3/27/45	Fassio
2,514,665	7/11/50	Myller
2,537,070	1/9/51	Longfellow
2,543,780	3/6/51	Hipps et al.
2,677,369	5/4/54	Knowles
2,774,350	12/18/56	Cleveland
2,789,558	4/23/57	Rush
2,832,343	4/29/58	Mose
2,842,131	7/8/58	Smith
3,128,768	4/14/64	Geistauts
3,298,372	1/17/67	Feinberg
3,426,364	2/11/69	Lumb
3,486,505	12/30/69	Morrison
3,604,487	9/14/71	Gilbert
3,605,123	9/20/71	Hahn
3,709,219	1/9/73	Halloran
3,720,959	3/20/73	Hahn
3,750,652	8/7/73	Sherwin
3,855,638	12/24/74	Pilliar
3,867,728	2/25/75	Stubstad et al.
3,892,232	7/1/75	Neufeld
3,905,047	9/16/75	Long
3,915,151	10/28/75	Kraus
3,948,262	4/6/76	Zaffaroni
3,952,334	4/27/76	Bokros et al.
3,987,499	10/26/76	Scharbach et al.
4,016,651	4/12/77	Kawahara et al.
4,051,905	10/4/77	Kleine
4,059,115	11/22/77	Jumashev et al.
4,070,514	1/24/78	Entherly et al.
4,086,701	5/2/78	Kawahara et al.
4,124,026	11/7/78	Berner et al.

4,142,517	3/6/79	Stravropoulos et al.
4,168,326	9/18/79	Broemer et al.
4,175,555	11/27/79	Herbert
4,177,524	12/11/79	Grell et al.
4,181,457	1/1/80	Holmes
4,206,516	6/10/80	Pilliar
4,222,128	9/16/80	Tomonaga et al.
4,237,948	12/9/80	Jones et al.
4,259,072	3/31/81	Hirabayashi et al.
4,262,369	4/21/81	Roux
4,271,832	6/9/81	Evans et al.
4,289,123	9/15/81	Dunn
4,293,962	10/13/81	Fuson
4,309,777	1/12/82	Patil
4,328,593	5/11/82	Sutter et al.
4,333,469	6/8/82	Jeffcoat et al.
4,341,206	7/27/82	Perrett et al.
4,349,921	9/21/82	Kuntz
4,356,572	11/2/82	Guillemin et al.
4,401,112	8/30/83	Rezaian
4,405,319	9/20/83	Cosentino
4,423,721	1/3/84	Otte et al.
4,439,152	3/27/84	Small
4,450,834	5/29/84	Fischer
4,484,570	11/27/84	Sutter et al.
4,492,226	1/8/85	Belykh et al.
4,501,269	2/26/85	Bagby
4,507,115	3/26/85	Kambara et al.
4,530,360	7/23/85	Duarte
4,535,485	8/20/85	Ashman et al.
4,542,539	9/24/85	Rowe, Jr. et al.
4,545,374	10/8/85	Jacobson
4,547,390	10/15/85	Ashman et al.
4,552,200	11/12/85	Sinha et al.

4,553,273	11/19/85	Wu
4,554,914	11/26/85	Kapp et al.
4,570,623	2/18/86	Ellison et al.
4,570,624	2/18/86	Wu
4,599,086	7/8/86	Doty
4,600,000	7/15/86	Edwards
4,604,995		Stephens
4,608,052	8/26/86	Van Kampen et al.
4,611,581	9/16/86	Steffee
4,628,921	12/16/86	Rousso
4,634,720	1/6/87	Dorman et al.
4,636,217	1/13/87	Ogilvie et al.
4,636,526	1/13/87	Dorman et al.
4,645,503	2/24/87	Lin et al.
4,653,486	3/31/87	Coker
4,655,777	4/7/87	Dunn
4,661,536	4/28/87	Dorman et al.
4,665,920	5/19/87	Campbell
4,677,883	7/7/87	Lee
4,677,972	7/7/87	Tornier
4,693,721	9/15/87	Ducheyne
4,696,290	9/29/87	Steffee
4,698,375	10/6/87	Dorman et al.
4,710,075	12/1/87	Davison
4,713,004	12/15/87	Linkow et al.
4,714,469	12/22/87	Kenna
4,721,103	1/26/88	Freedland
4,736,738	4/12/88	Lipovsek et al.
4,743,256	5/10/88	Brantigan
4,743,260	5/10/88	Burton
4,759,766	7/26/88	Buettner-Janz et al.
4,759,769	7/26/88	Hedman et al.
4,790,303	12/13/88	Steffee
4,820,305	4/11/89	Harms et al.

4,830,000	5/16/89	Shutt
4,834,757	5/30/89	Brantigan
4,848,327	7/18/89	Perdue
4,851,008	7/25/89	Johnson
4,863,477	9/5/89	Monson
4,865,603	9/12/89	Noiles
4,877,020	10/31/89	Vich
4,903,882	2/27/90	Long
4,911,718	3/27/90	Lee et al.
4,913,144	4/3/90	Del Medico
4,943,291	7/24/90	Tanguy
4,955,908	9/11/90	Frey et al.
4,957,495	9/18/90	Kluger
5,084,050	1/28/92	Draenert
5,122,130	6/16/92	Keller
5,505,732	4/9/96	Michelson
FOREIGN PATENT DOCUMENTS		
Document Number	Date	Country
0 260 044	3/16/88	Europe
0 307 241	3/15/89	Europe
0 599 419 A2	6/1/94	Europe
0 179 695	4/30/86	France
2 581 336	11/7/86	France
1961531	7/9/70	Germany
DE 3101333 A1	12/24/81	Germany
DE 3132520 A1	6/16/82	Germany
DE 3505567 A1	6/5/86	Germany
106 101	7/21/39	Sweden

Copies of the remaining listed documents were previously submitted in a prior application, serial no. 08/396,414, filed February 27, 1995, upon which applicant relies for the benefits provided in 35 U.S.C. § 120. Applicant respectfully requests that the

Examiner consider the listed documents and indicate that they were considered by making appropriate notations on the attached form.

The present application Serial No. 09/605,001 is a continuation of application Serial No. 08/396,414, which is a continuation-in-part application of Serial No. 08/074,781, now U.S. Patent No. 5,484,437, which is a continuation-in-part application of Serial No. 07/968,240, now U.S. Patent No. 5,741,253, which is a continuation application of Serial No. 07/698,674, now abandoned, which is a divisional application of Serial No. 07/205,935, now U.S. Patent No. 5,015,247.

Applicant brings to the Examiner's attention that the '247 patent is the subject of litigation in the United States District Court for the Central District of California, Western Division, Civil Action No. 95-0258RG, hereinafter referred to as Litigation 1. The claims of the '247 patent are directed to a fusion implant.

The '253 patent is the subject of litigation in the United States District Court for the Western District of Tennessee, Civil Action No. 98-2369GA (JSG), hereinafter referred to as Litigation 2. The claims of the '253 patent are generally directed to a method for preparing adjacent vertebrae to receive an implant.

In Litigations 1 and 2, the Defendants have asserted that various references are pertinent to the issue of validity of the '247 and '253 patents respectively under 35 U.S.C. "102 and 103. Applicant notes for the Examiner on the attached Form 1449 in the column for the Examiner's initials the references identified by Defendants in Litigations 1 and/or 2 by the designation "Lit. 1" and "Lit. 2".

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed

documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claim in the application and applicant(s) determine(s) that the cited document(s) do not constitute "prior art" under United States law, applicant reserves the right to present to the office the relevant facts and law regarding the appropriate status of such documents.

Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 50-1066.

Respectfully submitted,

MARTIN & FERRARO, LLP

Date: August 29, 2000

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Chantilly, VA 20151-1101
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Facsimile: (703) 679-9303

By: 
Thomas H. Martin
Registration No. 34,383



OMB No. 0651-0011

INFORMATION DISCLOSURE CITATION
 (Use several sheets if necessary)

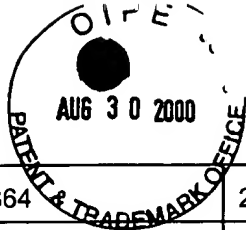
Atty. Docket No. 101.0044-04000 Serial No. 09/605,001 (Cont. of 08/396,414)

Applicant Gary K. Michelson, M.D.

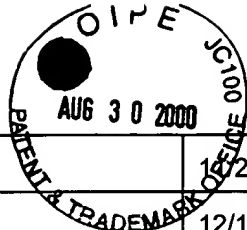
Filing Date June 27, 2000 Group (3764)

U.S. PATENT DOCUMENTS

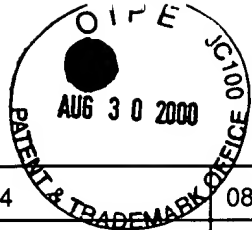
Examiner Initial*	Document Number	Date	Name	Class	Sub Class	Filing Date If Appropriate
	Des. 245,259	8/2/77	Shen			
	Des. 257,511	11/11/80	Zahn			
	Des. 260,525	09/01/81	Lassiter			
	Des. 281,814	12/17/85	Pratt et al.			
Lit. 1	Re. 31,865	4/16/85	Roux			
	Re. 34,871	3/7/95	McGuire et al.			
	350,420	10/5/1886	Dillon			
	1,137,585	4/27/15	Craig			
	2,065,659	12/29/36	Cullen			
	2,181,746	11/28/39	Siebrandt			
	2,243,718	5/27/41	De G. Moreira			
	2,372,622	3/27/45	Fassio			
	2,514,665	7/11/50	Myller			
	2,537,070	1/9/51	Longfellow			
	2,543,780	3/6/51	Hipps et al.			
	2,677,369	5/4/54	Knowles			
	2,774,350	12/18/56	Cleveland			
	2,789,558	4/23/57	Rush			
	2,832,343	4/29/58	Mose			
	2,842,131	7/8/58	Smith			
	2,878,809	03/24/59	Treace			
Lit. 2	3,128,768	4/14/64	Geistauts			
Lit. 1	3,298,372	1/17/67	Feinberg			



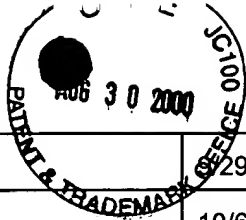
	3,426,364	2/11/69	Lumb			
Lit. 2	3,486,505	12/30/69	Morrison			
Lit. 1	3,604,487	9/14/71	Gilbert			
	3,605,123	9/20/71	Hahn			
	3,618,611	11/09/71	Urban			
	3,709,219	1/9/73	Halloran			
	3,720,959	3/20/73	Hahn			
	3,750,652	8/7/73	Sherwin			
Lit. 2	3,848,601	11/19/74	Ma et al.			
	3,855,638	12/24/74	Pilliar			
	3,867,728	2/25/75	Stubstad et al.			
	3,867,950	02/25/75	Fischell			
Lit. 2	3,875,595	4/8/75	Froning			
	3,888,260	06/10/75	Fischell			
Lit. 2	3,892,232	7/1/75	Neufeld			
Lit. 1	3,905,047	9/16/75	Long			
	3,915,151	10/28/75	Kraus			
	3,916,907	11/04/75	Peterson			
	3,918,440	11/11/75	Kraus			
	3,942,535	03/09/76	Schulman			
	3,948,262	4/6/76	Zaffaroni			
	3,952,334	4/27/76	Bokros et al.			
	3,987,499	10/26/76	Scharbach et al.			
Lit. 1	4,016,651	4/12/77	Kawahara et al.			
	4,027,392	06/07/77	Sawyer et al.			
	4,051,905	10/4/77	Kleine			
	4,059,115	11/22/77	Jumashev et al.			
	4,070,514	1/24/78	Entherly et al.			
	4,082,097	04/04/78	Mann et al.			
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Lit. 1	4,124,026	11/7/78	Berner et al.			
	4,142,517	3/6/79	Stravropoulos et al.			
	4,168,326	9/18/79	Broemer et al.			



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Lit. 1	4,177,524	12/11/79	Grell et al.			
	4,181,457	1/1/80	Holmes			
	4,197,850	04/15/80	Schulman et al.			
	4,206,516	6/10/80	Pilliar			
	4,222,128	9/16/80	Tomonaga et al.			
	4,232,679	11/11/80	Schulman			
	4,232,679 B1	05/31/88	Schulman			
	4,237,948	12/9/80	Jones et al.			
	4,258,716	03/31/81	Sutherland			
Lit. 1	4,259,072	3/31/81	Hirabayashi et al.			
Lit. 1	4,262,369	4/21/81	Roux			
	4,271,832	6/9/81	Evans et al.			
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Lit. 1	4,293,962	10/13/81	Fuson			
	4,309,777	1/12/82	Patil			
Lit. 1	4,328,593	5/11/82	Sutter et al.			
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	4,405,319	9/20/83	Cosentino			
	4,414,979	11/15/83	Hirshorn et al.			
	4,423,721	1/3/84	Otte et al.			
	4,439,152	3/27/84	Small			
	4,450,834	5/29/84	Fischer			
Lit. 1	4,484,570	11/27/84	Sutter et al.			
	4,492,226	1/8/85	Belykh et al.			
	4,497,320	02/05/85	Nicholson et al.			
Lit. 1 and 2	4,501,269	2/26/85	Bagby			
	4,507,115	3/26/85	Kambara et al.			
	4,530,360	7/23/85	Duarte			

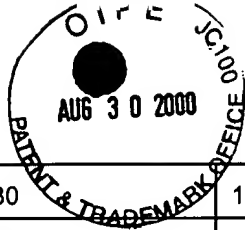


	4,535,374	08/13/85	Anderson et al.			
	4,535,485	8/20/85	Ashman et al.			
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	4,547,390	10/15/85	Ashman et al.			
	4,549,547	10/29/85	Brighton et al.			
	4,552,200	11/12/85	Sinha et al.			
	4,553,273	11/19/85	Wu			
	4,554,914	11/26/85	Kapp et al.			
	4,570,623	2/18/86	Ellison et al.			
Lit. 2	4,570,624	2/18/86	Wu			
	4,592,346	06/03/86	Jurgutis			
	4,599,086	7/8/86	Doty			
	4,600,000	7/15/86	Edwards			
	4,602,638	07/29/86	Adams			
	4,604,995		Stephens			
	4,608,052	8/26/86	Van Kampen et al.			
	4,611,581	9/16/86	Steffee			
	4,619,264	10/28/86	Singh			
	4,628,921	12/16/86	Rousso			
	4,634,720	1/6/87	Dorman et al.			
	4,636,217	1/13/87	Ogilvie et al.			
	4,636,526	1/13/87	Dorman et al.			
	4,645,503	2/24/87	Lin et al.			
Lit. 1	4,653,486	3/31/87	Coker			
	4,653,509	3/31/87	Oloff et al.			
	4,655,777	4/7/87	Dunn			
	4,661,536	4/28/87	Dorman et al.			
	4,664,567	05/12/87	Edwards			
	4,665,920	5/19/87	Campbell			
	4,677,883	7/7/87	Lee			
	4,677,972	7/7/87	Tornier			
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	4,743,260	5/10/88	Burton			
	4,759,766	7/26/88	Buettner-Janz et al.			
	4,759,769	7/26/88	Hedman et al.			
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	4,781,591	11/01/88	Allen			
	4,790,303	12/13/88	Steffee			
	4,805,602	02/21/89	Puno et al.			
	4,820,305	4/11/89	Harms et al.			
	4,830,000	5/16/89	Shutt			
Lit. 1 and 2	4,834,757	5/30/89	Brantigan			
Lit. 2	4,848,327	7/18/89	Perdue			
	4,851,008	7/25/89	Johnson			
Lit. 2	4,863,476	09/05/89	Shepperd			
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	4,865,603	9/12/89	Noiles			
Lit. 1	4,877,020	10/31/89	Vich			
Lit 1 and 2	4,878,915	11/7/89	Brantigan			
	4,903,882	2/27/90	Long			
	4,904,260	2/27/90	Ray et al.			
	4,904,261	2/27/90	Dove et al.			
	4,911,718	3/27/90	Lee et al.			
	4,913,144	4/3/90	Del Medico			
	4,936,848	6/26/90	Babgy			
	4,943,291	7/24/90	Tanguy			
	4,955,908	9/11/90	Frey et al.			

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	5,122,130	6/16/92	Keller			
	5,123,926	6/23/92	Pisharodi			
	5,171,278	12/15/92	Pisharodi			
	5,192,327	3/9/93	Brantigan			
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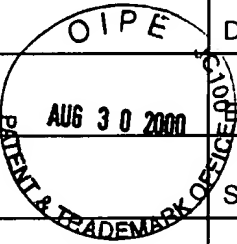
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